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CITY'S PROHIBITION OF NEW PARADES ALONG FIFTH AVENUE FOUND CONSISTENT WITH THE FIRST AMENDMENT

SECOND CIRCUIT COURT OF APPEALS UNANIMOUSLY UPHOLDS DISTRICT COURT DECISION

Contact: Kate O'Brien Ahlers / Connie Pankratz (212) 788-0400 media@law.nyc.gov

New York, November 17, 2009 – The Second Circuit Court of Appeals ruled today that the City's restriction on new parades along Fifth Avenue is consistent with the First Amendment. The International Action Center sued the City and argued that the "Fifth Avenue Rule," which allows traditional parades to continue but prohibits new parades along Fifth Avenue, violates the First Amendment. The appellate court upheld the district court's determination that the rule properly balances the celebration of traditional and cultural events with quality of life considerations for local residents and businesses.

Fifth Avenue is a highly desirable parade route and, given its popularity, the City began limiting the number of parades allowed in 1971 to prevent parade over-saturation and protect the quality of life of those who live and work near Fifth Avenue. The City codified its "Fifth Avenue Rule" in 2001 – making it law to only permit 15 historically traditional annual parades on Fifth Avenue.

"We are pleased that the appellate court upheld the City's restriction on new Fifth Avenue parades as consistent with the First Amendment. Out of concern for residents, commerce, and traffic, it would be simply impossible to grant every organization's request to hold a parade on Fifth Avenue, a major thoroughfare in a major metropolis," said New York City Corporation Counsel Michael A. Cardozo. "As today's decision confirms, by limiting Fifth Avenue to 15 historically traditional events, while leaving open many alternative sites for parades and demonstrations, the City has struck the right balance."

The IAC initially sued the City in 2005 after its request for a parade along Fifth Avenue was declined. It sought to march along Fifth Avenue both to and from a rally in Central Park to commemorate and protest the anniversary of the war in Iraq. The City denied the requested route and suggested an alternate route—consistent with the law limiting parades along Fifth Avenue. However, the IAC filed suit claiming that the "Fifth Avenue Rule" favored cultural parades over marches dealing with current events and was therefore not content neutral and in violation of the First Amendment.

The Second Circuit Court of Appeals, ruling in favor of the City's position, upheld the district court's determination that the rule is content neutral as it prohibits all new parades regardless of purpose and that it is narrowly tailored to serve the City's public safety and quality of life concerns. The unanimous ruling stated:

"The Fifth Avenue Rule applies to all 'new' parades, irrespective of their content. There is nothing in the record to suggest that the City has banned new parades on Fifth Avenue because it is seeking to restrict speech relating to current events."

The NYPD, which is authorized to issue parade permits, grants permits as requested whenever possible. When the requested parade route is not operationally feasible, alternate routes are suggested. Operational issues include conflicts with other events, traffic concerns, security problems, or interference with emergency services – such as fire, police, and ambulance access. Each year, the NYPD issues over 600 parade permits citywide.

Currently, in addition to the 15 traditional parades, the City is permitted to authorize special permits for events on Fifth Avenue and other areas where parade permits may not be issued, only if they are of exceptional public interest, such as celebrations “honoring the armed forces; sports achievements or championships; world leaders and extraordinary achievements of historic significance.”

Each of the 15 traditional parades draws hundreds of thousands of spectators and include:

<u>Parade Name</u>	<u>Year Started</u>
St. Patrick’s Day	1772
Columbus Day	before 1904
Veteran’s Day	1919
Labor Day	1950s
Federation of Hellenic Societies	1957
369 th Veterans Association/ Martin Luther King Day	1959
Puerto Rican Day	1967
Salute to Israel Day	1969
Steuben Day	1969
Defile de la Hispanidad Inc.	1969
Captive Nations Committee	1969
International Society for Krishna Consciousness (ISKON)	1976
Pulaski Day	1976
The Marathon	1981
Heritage of Pride	1984

Scott Shorr, Senior Counsel, defended the City’s position on appeal and Virginia Waters, Senior Counsel, successfully argued the case before the Southern District.

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